## DEMANDS FOR GRANTS — (*Contd.*)

### DEMAND II—TAXES ON INCOME.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Sir, I beg to move for a grant of Rs. 6·15 lakhs under Demand II —Taxes on Income.

***Motion 47.***

The following motion lapsed, the member being absent:—

MR. P. K. NARAYANA PILLAI:

47. To omit the allotment of Rs. 3,870 for Income Tax Inspectors.

***Motoln 48.***

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtitta*): I move the following motion :—

*48. To omit the allotment of Rs. 1,763 for four clerks.*

It is provided in the budget that the staff of each of the Division Cutcherries is to be strengthened by the addition of one clerk on Rs. 40-70 for the proper checking of income tax accounts. There are clerks in the Division Cutcherries who are properly checking the accounts now ; and if there are complicated accounts, the auditor in the Revenue Commissioner's office may be requisitioned for working in the Division Cutcherries. I hope Mr. Robinson will be able to tell us the number of complicated cases in which the auditor's help was sought. There are three Income Tax Inspectors in Trivandrum, Quilon and Alleppey who have not had sufficient work. In 1098 they have added only the names of 34 assessees, and this year, in answer to my interpellation, it was stated that the number of fresh assessees was very small. So, even if the existing clerks are to be helped in the checking of the accounts, that can be done by the existing Income Tax Inspectors. In view of the recent floods it cannot be expected that we will get more revenue than at present under income tax next year. Therefore the work cannot increase next year to such an extent as to necessitate the appointment of four more clerks in the Division Cutcherries. On these grounds I bring forward this motion.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Sir, I beg to oppose the motion. I would first of all bring to the notice of the members of the House that we are working the Income Tax Act very much cheaper here than in any other country. We have entertained hardly any staff worth mentioning to carry on this work of assessing and so on. We have a very small staff in the whole State. We practically carry on the work with the old Revenue staff, and there is a certain point beyond which it will not be sound policy to reduce the establishment, and that point we have now reached. At present we are trying to pull on in all ways and the whole work is being carried on by the Division Collectors and the old revenue staff.

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[Mr. S. C. H. Robinson.]

This matter of providing one extra trained clerk in each Dewan Peishkar's office has been urged by the other side of the House itself. Since the reorganisation of the department the Dewan Peishkars and the Commissioner, Devicolam, were only able to spare, for the time being, one clerk for each of the Income Tax officers. The members of this staff, besides their work of maintaining up-to-date registers, have to attend to the general correspondence—and that is very huge—to the issue of notices under the Income Tax Regulation, notices for the return of income, notices for the production of accounts, etc. In addition to all these, they have to help the Dewan Peishkar in examining the accounts of firms, merchants, etc., which have to be produced in connection with the appeals in original assessment cases from the award of Collectors. The Dewan Peishkars and the Commissioner, Devicolam, have found by experience that it is not possible for the present staff, with the single clerk who is put on to income tax work, to do their work satisfactorily. Further, these clerks had been attending only to revenue work in the Revenue Department. They have no practical experience in book-keeping and such other commercial subjects. The consequence is that the firms, and the public generally, suffer. Firm accounts are very complicated and unless a man has had some experience in commercial book-keeping, it is not possible for him to check the accounts.

Mr. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know whether the auditor is not sent to Division Cutcherries?

Mr. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Of course he is being sent round. But it is not possible for him to go round and cope with the enormous work. The present work is done in a slip-shod way and it is not possible for the auditor to check all the accounts. We want experienced men in each office to go through these accounts not only relating to big firms but also relating to small firms. If this is done it will result in very great satisfaction to the Government and to the assessees. We have also been receiving many complaints from the merchants and others because their books are kept in the Dewan Peishkar's office for a long time now. The men at present attending to this work are overworked. And not only that, we want experienced men.

Mr. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Will one experienced clerk be sufficient for each Division?

Mr. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): That is what I have applied for.

Mr. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Is it not in addition to the existing clerks?

Mr. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Yes; that is because the existing clerks are overworked. We are working with the old revenue staff. The income tax in the whole,

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State is very great. The actual staff in my office consists of six clerks and one auditor. The work done in Travancore is much cheaper than in any other country.

MR. C. SANKARA MENON (*Quilon*): As the Income Tax Inspectors have very little work to do, cannot this work be done by appointing Inspectors who are qualified in book-keeping?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): That is not possible. The investigating officer cannot also be the assessing officer. The man who is in the offfce is helping the Dewan Peishkar in hearing appeals.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know whether the clerk is an assessing officer?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): No; he is the man who goes to the Dewan Peishkar and helps him. This arrangement is more or less the arrangement adopted in Madras and other places. Out of this very small expenditure on the staff for collecting the income tax a very big income accrues to the Government. I am sure after this explanation the member will withdraw his motion.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know whether the Inspectors have got sufficient time, and what they are doing just now?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Shall I go through the whole work of the Inspectors, Sir? There were six Inspectors first. But their posts were abolished. But without them we could not get on. In 1098 therefore the Council had to sanction three Inspectors, as the former number was abolished. I shall give the work of the Inspectors in the towns. Three Inspectors have been appointed to the three towns—Trivandrum, Alleppey and Kottayam. Of course, the work in the town is very much more than the work in rural parts; therefore we want a full-time man in the town to make enquiries and to go round finding new assessees and that sort of thing. The revenue officers are not able to do that work in big towns. All that they can do in addition to their work is to attend to the work of assessment in rural parts. To give the House some idea of what the Inspectors' work is I shall speak of the Trivandrum Inspector. He has to attend to Trivandrum and Nagercoil. He has got 11,902 occupied houses with a population of 72,784.

PRESIDENT: What the member wants to know is whether the Inspectors have got work all the year round. I think that is what you want to know, Mr. Madhava Variar?

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): I want to know whether the Inspectors have not got sufficient time to assist the existing clerks.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Even if they have the time, they have not got the training. We want trained men. It was a gentleman on the other side of the

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[Mr. S. C. H. Robinson.]

House who made this suggestion and we found it to be necessary. I think it was Mr. Mackie who said that. It was because the non-officials said it was necessary that we are asking for this grant.

Mr. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Sir, I am not convinced by Mr. Robinson that the appointment of four more clerks is necessary in these Divisions. He says that the Income Tax Department is very cheaply run and he wishes Government to be congratulated for that. What I say is, because it is cheap, we should try not to make it very expensive. Mr. Robinson says that the existing clerks and Inspectors are not competent to examine accounts and so expert clerks are necessary. If the present clerks and Inspectors are not competent they must be sent away to some other department and expert hands appointed to the Income Tax Department.

Mr. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): That is a mistake. What I said was that they had no training in commercial book-keeping. They knew their legitimate work—the magisterial work and the revenue work. This is a new branch of Government work and they are not trained in this branch. We want men who are trained in income tax and auditing.

Mr. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): That is what I am saying. Trained people must certainly be appointed and the existing people, if they are not trained in auditing work, must be sent away to some other department and trained people appointed in their stead. I ascertained the fact from Quilon whether the Income Tax Inspector had got sufficient work and whether he wanted the help of an account clerk. Mr. Robinson has not told me in how many cases the Inspector was sent to examine complicated accounts. So I press the motion for the reduction of this grant.

Mr. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Sir, about the Income Tax Inspectors, I must again point out that they are investigating officers and that they are engaged in investigating cases all the year round. This goes on continually and it would be most dangerous for the tax-payer to have the investigating officer also helping in the assessment. His work has to be done very judicially, and, if he is also to do the work of assessment, it would work very hard and there would be continual complaints. He cannot go into the office and help the Dewan Peishkar in his office work. He can only go to the field and help the Collector in his investigation. If the work is not done properly, I must say, he would be helping a lot of injustice.

I have already pointed out that we are trying to carry on the work of assessing with the old revenue staff. But we find it very difficult. The public are suffering in consequence. They know that the staff in the office is not sufficient. The merchants and others who go to the office have to sit there for a long time; their accounts are not checked in

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time because the office staff has not got the time to do it. They have got all sorts of work to do. The member suggests that one of the clerks of the revenue offices may be asked to do this work. We find him incompetent and incapable of coping with this additional work. I would like to give a list of the work of the Income Tax Inspector, but that will take a good deal of time. I do not therefore propose to give it. I do not think there is anything more on the subject to be replied to.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know the number of days on which the auditor was sent to Quilon for examining complicated cases?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I have not got the exact number now. It was 15 to 20 days roughly. Two or three days were spent at Alleppey. In my own office he is checking all the accounts relating to the merchants of the Chalai Bazaar. He has a great deal of work to do. I think Mr. Mackie knows that.

MR. N. KUMARAN (*Nominated*): May I know whether the idea is to appoint qualified auditors as clerks?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I said *clerks*. The pay of the auditor would be rather too high. So I asked simply for clerks. I want to get men who have some training in commercial book-keeping.

MR. N. KUMARAN (*Nominated*): May I know whether Mr. Robinson will be able to do away with the auditor in his office if four clerks are appointed?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): The auditor is necessary. He will have to go round other offices helping the Tahsildars, Division Assistants and so on. He is occupied with much work in my office for a large portion of the year. He was wanted at Devicolam and Peermade. But I was not able to send him. He is fully engaged here.

PRESIDENT: Do you press the motion, Mr. Madhava Variar?

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Yes, Sir.

The motion was put to the vote and declared lost.

***Motion 49.***

PRESIDENT: There are four motions which are identical with Mr. G. Parameswaran Pillai's motion. I request Mr. G. Parameswaran Pillai to move his motion. The other gentlemen will speak on it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I beg to move the following motion:—

*49. To omit the allotment of Rs. 1,000 for fees to Vakils.*

Sir, this question appears to have been discussed in this Council at the last session in connection with a supplementary demand for grants made this year. I wish to raise the question again for the attention of

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[Mr. S. C. H. Robinson.]

the House, for I am convinced that this item may well be omitted. The reasons that have been advanced in favour of retaining vakils to represent the Government in cases coming before the Land Revenue and Income Tax Commissioner appear to be chiefly two-fold; firstly, that he is a judicial officer and, as such, both sides of the case should be presented to him, and that he has to perform his duties as judge after hearing what has to be said both on behalf of the Government and the assessee who is the appellant; and secondly that the Sirkar Vakils who are already engaged for conducting Sirkar cases before particular courts cannot be directed to appear before the Income Tax Commissioner for any case in which the Income Tax Commissioner may find it necessary to hear the Sirkar also. My contention, Sir, is that there is no necessity for any vakil being heard on behalf of the Government before the Income Tax Commissioner sitting as an appellate authority.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Do not vakils appear on both sides before the High Court?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; they ought to appear on both sides. It is very desirable that both sides should be represented. But, unfortunately, I cannot subscribe to the view that the Income Tax Commissioner, when he disposes of appeals by assessees, may be regarded on a footing with the judicial officers of the High Court or the District Courts or the Magistracy, for the following reason. The frame-work of the Income Tax Regulation itself makes it beyond doubt that, whenever there is a question of law raised relating to the interpretation of any of the provisions of the Regulation, such question should be referred to the High Court for decision.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I beg to correct one point about it. It is not questions of *fact* but only questions of *law*.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I did not say questions of fact. I only said questions involving the interpretation of any of the provisions of law.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Only if there is any doubt.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Of course. If any provision of the law appears to the Income Tax Commissioner to be beyond all doubts, I do not think that the engagement of a vakil on behalf of Government will become necessary at all, because *prima facie* the particular case may appear to be quite clear to the Income Tax Commissioner and there may not be any necessity for the arduous work of a legal adviser to convince him that it requires any advice.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): But before he comes to that state of doubt, has he not first of all to hear both sides laid clearly before him? It is only after hearing them that the question of doubt or no doubt arises.

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MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is exactly what I object to. I do not want the Government to ask us to pay for vakils to create doubts in the mind of the Income Tax Commissioner. (*Laughter.*)

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Is it not the assessee who creates doubts in the mind of the Commissioner?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; the Income Tax Regulation provides for it and it is the special privilege of the assessee that, whenever doubtful points have been raised, the question should be referred to the High Court ordinarily. The spirit of the Regulation is that, whenever doubtful points arise in regard to the interpretation of the Statute, the Income Tax Commissioner should not take upon himself the responsibility of deciding such questions and they should ordinarily be referred to a judicial tribunal of the status of the High Court. I am speaking only on the spirit of the Regulation. Perhaps the Regulation may be amended subsequently, in which case, matters may be treated differently. But, as it is, it appears to me that the spirit of the Regulation prescribes that, whenever doubtful points relating to the interpretation of the provisions arise, it is desirable that such cases should be referred for decision to such a judicial tribunal as the High Court. If so—

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May I ask the member whether that is the stage at which the Sirkar Vakil appears?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes; the Sirkar Vakil, I think, now appears before any doubt arises.

MR. A. HOOGEWERF (*Nominated*): Does not the Land Revenue Commissioner consult the Head Sirkar Vakil whenever there is a doubt?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I will come to that later on.

In regard to this objection I have only to refer to Mr. Robinson's statement at the last session when this question was raised. He said that it was not intended to engage these vakils in ordinary cases but only in intricate cases where doubtful questions of law arise. Now, if that be the intention, I say that before vakils are engaged the Income Tax Commissioner will have to decide for himself whether one is a fit case in which the Sirkar should be represented or not. Perhaps Mr. Robinson's point is that, in order that he may make up his mind to say that the Sirkar also should be represented, he has to hear both sides and then come to some understanding about it; or in order to make up his mind to refer the case to the High Court or not, he has first to see from the Sirkar Vakil's argument whether a reference to the High Court is necessary. I object to this procedure. The engagement of Sirkar Vakils would have a very dangerous effect. There may be cases in which apparently there is a doubtful question of law raised. The



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[Mr. G. Paramesvaran Pillai.]

Sirkar Vakil will come and say that there is no room for doubt in this case. "Here is a clear case so that you need not refer it to the High Court."

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): There is Section 50 of the Regulation making it incumbent on the Income Tax Commissioner to refer any such case to the High Court. It says that he *shall* so refer any such questions on the application of the assessee.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There is also a proviso---'unless he thinks it unnecessary.' If Mr. Robinson would delete that proviso, I will have absolutely no objection.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): If he says that it is unnecessary, he has to give reasons for the same.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): So that, in order to make up his mind as to whether a particular case should be referred to the High Court or not, I say that the service of the Sirkar Vakil certainly is not required. In my humble opinion, the service of the Sirkar Vakil is not needed to represent Government in regard to this point, because whenever the assessee raises a question of law relating to the interpretation of any of the provisions of the Regulation, unless the Income Tax Commissioner feels that it is absolutely frivolous or that there is no doubt about this matter---

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May he not go by the previous High Court or Privy Council opinions?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): It is very desirable that the Income Tax Commissioner should tap all sources of information so that he might make up his mind in regard to that point. I would just recommend to him one such source and that is, instead of asking these Sirkar Vakils to appear before him and making a payment for every such appearance, it is just possible for him to make a reference to the Head Sirkar Vakil through Government for any legal opinion that he might want in connection with any doubtful points that may arise in the course of the decision of a particular case, because, we find that, in similar instances, references are made by the Government to the Head Sirkar Vakil from time to time in regard to doubtful points arising in the working of the Land Conservancy Regulation and similar Regulations wherein the chief revenue authority happens also to be exercising the functions of a judicial officer inasmuch as he is performing his functions under a particular Statute. In such cases only references are made to the Head Sirkar Vakil. These references come to him, and, fortunately for us, the terms of the contract of the Sirkar Vakils do not preclude them from answering references made to them by the Government. So that, it may not be said by a Sirkar Vakil: "I am not paid for

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this work. I have been paid only for appearing before a particular court at stated hours." He has necessarily to answer any references made to him by the Government, so much so that, if under any extraordinary circumstance the Commissioner feels any doubt as to any particular provision, he can make a reference to the Sirkar Vakil and through him he can ascertain for himself whether one is a fit case for reference to the High Court. My only objection is that the Sirkar Vakil's appearance will have this effect upon the Income Tax Commissioner. I am not speaking of any particular incumbent of the office. We are all satisfied that Mr. Robinson, the Income Tax Commissioner, is performing his duties impartially and fairly as a judicial officer. (A voice: *Hear, hear.*) But that is not the point which I want to bring to the notice of the Council. The Income Tax Commissioner, whoever he may be for the time being, should not be influenced in any way by the appearance of the Sirkar Vakil, especially in view of this provision, *viz.*, the discretion vested in him of rejecting any such application for reference to the High Court on grounds which are very vague. Under such circumstances, the Income Tax Commissioner should not be given any opportunity to be influenced by a Sirkar Vakil coming forward and saying: "Here is a case which is beyond doubt. Please do not refer this to the High Court." If, as a matter of fact, the Income Tax Commissioner should have any information about it, he may freely have his doubts cleared through references made to the Sirkar Vakil's Department.

This will be, as it is, an unnecessary item of expenditure and various complications would ensue on account of this fact as there is a tug of war between the Government and the Sirkar Vakils. The Government say: "Our Sirkar Vakils are engaged only for particular purposes. That is the understanding on which they have agreed to serve the Government as Sirkar Vakils and they say that even if they are given any remuneration they are unwilling to do the work." There are all these complications. I say that all these can be avoided by the Income Tax Commissioner making references through the Government to the Head Sirkar Vakil. Further, I should also like to know from Mr. Robinson whether, after all, there has been any necessity for engaging Sirkar Vakils on behalf of the Government, felt by him even before the suggestion was made in this Council by a non-official member during the last budget discussion. I am submitting this, subject to correction. If the Income Tax Commissioner had recommended any such Sirkar Vakil being engaged to appear before him after the suggestion I should also like to be informed. For these reasons I think all this expenditure may be deleted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to support Mr. Parameswaran Pillai's motion. Sir, this item which is put down as payment to vakils is an improper item. Referring to the budget of the previous years we do not come across any such item as having been included in the budget. Mr. Robinson says that he is a judicial officer, and, as such, he must necessarily hear both sides of the question.

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[Mr. P. K. Narayana Pillai.]

I controvert these statements. First of all, he is not a judicial officer. If he is a judicial officer, the test is whether he has got power to examine witnesses on oath before him under the ordinary methods enunciated for the conduct of judicial proceedings. The expression 'judicial proceedings' has been defined in the Evidence Act. That means the power to take evidence which must be on oath. I have never seen Mr. Robinson or any other income tax officer summoning any witness for the purposes of examination and cross-examination.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May I ask Mr. Narayana Pillai whether, since the last session, he has seen in the commentary any reference to the Income Tax Commissioner as a judicial officer?

PRESIDENT: He has given reasons for saying that your proceedings are not judicial proceedings. You may controvert them.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am referring Mr. Robinson to the definition of judicial proceedings under the Evidence Act. If he is prepared to adopt it, he is at liberty to accept my view. If he thinks that that is no authority, he is at liberty to oppose it. For the time being, my position is this. Mr. Robinson does not take the evidence of any witness on oath. He is not therefore a judicial officer. The Act does not say anywhere that Mr. Robinson must hear the opposite side in any procedings.

Therefore my submission is, in the first place, that he is not a judicial officer. He is only a revenue officer whose powers are regulated by the Income Tax Regulation. Sir, as to hearing both sides of the question, it is good not with regard to judicial proceedings only, but as regards all disputes. Suppose there is a dispute between two members on this side or on the opposite side of the House. It is fair that the disputes are settled by hearing both sides. That is a very sound principle of universal application and I have no quarrel with that. But the question is whether Mr. Robinson as an income tax officer is empowered to hear the opposite side. My submission is that the Income Tax Regulation itself is a self-contained Regulation, as regards any matter which comes under the purview of it. If, as a matter of fact, Mr. Robinson is a judicial officer, I may suggest that his office may be abolished. For, it makes no difference for the Government to litigate in a court of law, to realise the assessment due from each assessee without resorting to a special judicial officer like Mr. Robinson appointed under the Regulation. We have got judicial courts, enough for purposes of expediting the collection of revenue and can do away with the special agency of Mr. Robinson. To say that Mr. Robinson is not a revenue officer is entirely wrong.

Then, I would refer also to the provisions of the Income Tax Regulation. If Mr. Robinson is a judicial officer in the sense that a judge of the civil court is a judicial officer or a magistrate of the criminal court

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is said to be a judicial officer, then the provisions parallel to the provisions in the Civil Procedure Code and the Criminal Procedure Code certainly would have been found in the Income Tax Regulation. For example, in the matter of hearing appeals under the Code of Criminal Procedure or the Code of Civil Procedure, it is not left to the option of the presiding officer as regards the hearing of the opposite side. It is obligatory upon him that he should invariably hear both the sides. Is there a similar provision in the Income Tax Regulation which makes it obligatory upon Mr. Robinson or any other person who holds an enquiry that he should invariably hear the opposite side? There is no such provision. Then, if he thinks that he is a judicial officer, as has been pointed out instancing the High Court Judges, and if he thinks that he has the same power as the High Court Judges, I ask, why did not the Income Tax Regulation provide for the realisation of costs from the unsuccessful party by the successful party? If a certain assessee's appeal is allowed as against the Government, may I ask whether the Government would pay the costs to the appellant? They do not do so. If, on the other hand, the assessee's appeal is dismissed, Mr. Robinson unfortunately has not got the power to award costs. Mr. Robinson claims that he is a judicial officer and thinks that he has, some how or other, by some invisible rule, the power of hearing the opposite side, which is invariably the Sirkar and asks the tax-payer to pay the costs for the appearance of the Sirkar Vakil. It is invariably the defeated party that must be made to bear the burden of costs, but here it is not so. He thinks that the innocent public of Travancore have to pay the costs. That, again, I beg to submit, is a ridiculous position. The Regulation does not provide for any notice to be served as soon as an appeal is filed. He has been good enough to admit that, in 99 per cent. of cases, he does not want to hear the opposite side. Now, if he is a judicial officer, if he considers that he is bound by rules visible or invisible to hear the opposite side, I ask how he decides a number of appeals—the majority of them, at any rate—without hearing the opposite side. After all, when boiled down it comes to this. It is entirely left to his option whether he hears the opposite side or not. A judicial officer has not got any such discretion as regards the need of hearing the opposite side. Mr. Robinson says that, when he feels a difficulty, he wants to have the arguments of the Sirkar Vakil to assist him. I would submit it is really a case of Mr. Robinson clearing his difficulties of law or facts that are placed before him. For that, I think, it is extremely unjustifiable to call upon the poor tax-payer to assist Mr. Robinson in getting legal advice from such quarter. If Mr. Robinson himself is expected to study the facts, he is expected also to study the law. The legislature in its mercy has allowed certain other provisions. When any income tax officer finds it difficult to grasp difficult questions of law, there is the provision that he is at liberty to refer to the High Court for guidance. Of course, Mr. Robinson is not prepared to take advantage of it. He thinks that he will be able to get through the whole thing after hearing the arguments of the Sirkar Vakil and be done

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[Mr. A. Hoogewerf.]

with the whole matter. Invariably we find that the Sirkar Vakil's arguments have got a peculiar solvent effect upon all difficulties. (*Laughter.*) That is good enough so far as it goes. So that it goes really to complete the education of Mr. Robinson as an income tax officer. He wants the assistance of other people. For that the tax-payer has to pay! I beg to submit that, if Mr. Robinson finds it rather difficult to do his income tax work without the assistance of any other person, then, some other method will have to be found for the solution of income tax appeals than asking the tax-payer to pay for the enlightenment of Mr. Robinson. When I say this, I do not mean to cast any reflection on Mr. Robinson as an income tax officer. That he is a fair and capable officer I have no doubt, especially so in view of his openness to correction. But I would say that, so far as the tax-payer is concerned, it is extremely difficult to allow this grant. It is a provision illegal and unwarranted. So, I support the motion of Mr. G. Paramesvaran Pillai with all my heart.

MR. A. HOOGEWERF (*Nominated*): Mr. G. Paramesvaran Pillai, in his usual lucid style, as also Mr. Narayana Pillai, has put the whole question in a nut-shell. I join with the other members of this House in my appreciation of Mr. Robinson as one of our very best officers. I may say that he is a pride to the Travancore service. All the same, Sir, a bad impression has been created that he wants on the right or left hand side a Sirkar Vakil to interpret the Income Tax Regulation whenever he gets into deep waters. That, in the interests of both Mr. Robinson and the Department, is much to be deplored. Cases come before him after they have been thoroughly enquired into by an intelligent Tahsildar and a highly paid officer, the Dewan Peishkar. There is not much difficulty for him with all the files and the arguments on both sides laid before him. Very often, a vakil appears for the other side. Whenever he is in trouble, as stated by Mr. G. Paramesvaran Pillai and Mr. Narayana Pillai, he has the Head Sirkar Vakil who is very near to him and there is also the High Court to refer to.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May I know whether the member would raise any objection if the advice is given free by the Head Sirkar Vakil?

MR. A. HOOGEWERF (*Nominated*): If the Head Sirkar Vakil is willing to give advice to the Income Tax Commissioner free, *gratis* and for nothing (*laughter*) I shall have no objection. The whole trouble seems to be on the part of Mr. Robinson that he is obsessed with the idea that he is a judicial officer in this matter. Now, Sir, this is the most inopportune time for this demand to be brought before this House. I should have expected Mr. Robinson to have had some consideration for the poor suffering people of the north to have withdrawn this motion before we have the unpleasant duty of opposing it in this House to-day.

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MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I also like to support the motion brought forward by my friend Mr. Parameswaran Pillai. In supplementing what has already been said by the previous speakers, I have only to add one aspect of the case. There is already a loud complaint from the tax-payers that we have too many Sirkar Vakils and especially Head Sirkar Vakils, and the general impression among the tax-payers is that these Head Sirkar Vakils have not sufficient work. Further, there is also the complaint from the people that, whenever important cases are to be conducted, private vakils have to be engaged by the Sirkar. Surely all this state of affairs has rightly given room for complaint to the tax-payer. When such is the situation, the novel provision in the budget for additional expenditure in connection with income tax appeals seems to be almost a cruel one. And I simply support all the statements that have been made by the previous speakers and I am clearly of opinion that this allotment should not find a place in our budget.

MR. JOSEPH PANJIKARAN (*Shertallai*): I support the motion of Mr. G. Parameswaran Pillai for the reduction of the amount in the budget for the engagement of Sirkar Vakils in the matter of income tax appeals. I am very glad to see that Mr. Robinson is possessed with the idea that he is hearing appeals as a judicial officer, and I hope that he will continue that attitude even in the future disposal of cases. What the Income Tax Regulation wants is that he must, so far as it is in his power, decide cases according to the best of his ability. When any doubts arise as to a question of law, he must refer the matter to the High Court in order that the assessees may have the benefit of the pronouncement of the highest judicial tribunal in the land. So, the appointment of vakils to argue before the Income Tax Commissioner on behalf of the Sirkar is certainly objectionable. Then again, the other aspect of the question is that even supposing that somebody is engaged on behalf of the Sirkar to argue the cases, it would be a waste of money to pay them when we have so many Sirkar Vakils. Last time, when the supplementary grant was moved and when it was discussed, we had the opportunity of hearing at some length on the point from our esteemed friend the Law Member and he told us that the covenants between the Sirkar Vakils and the Government do not comprise this matter. I asked him specially whether there was any written covenant. He told us it was the understanding. Then I asked him whether there were any definite terms for their appointment. He was not able to give us any satisfactory reply. The situation is this. The Income Tax Regulation is a new Regulation, and most of the Sirkar Vakils who are now in service were appointed before the commencement of this Regulation. So, this may be considered as a new piece of duty thrown on them. As for that matter take the case of other public servants. The District Judges and Munsiffs who are now in service were entertained before some of the present Regulations were passed. For instance, the Insolvency Regulation and the Succession Certificate Regulation have certainly added a lot of work to the District Judges as also many other Regulations which have been passed by the

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[Mr. Tariatu Kunjitomman.]

Council. Now would it be proper on the part of the judicial officers of Government to come and say: "When we were employed, the understanding was that we should work the Regulations which were then in force. At that time, we did not think of the additional work thrown upon us by the Insolvency Regulation or the Succession Certificate Regulation or any of those Regulations that are newly being introduced into the country. So we must be given some new fees? That is the argument at the bottom of the demand. It seems to me therefore that the principle is that a person has got to be paid additionally if he has to do more work. In that case that principle must be extended not only to the Sirkar Vakils, but to other officers under the Crown. So, if this argument can hold good in this case, I do not see any reason why this argument could not be pushed further and our judicial officers also paid something in addition to their pay in respect of the cases in which they adjudicate on matters which have been brought under their judicial control by the introduction of new legislation. This is, in my opinion, a very wrong principle and it should not be given a footing in this land. During the last session of the Council, Mr. Subba Aiyar was talking about the terms and understandings regarding the appointment of Sirkar Vakils; they were very vague, and no definite idea could be formed about it. I do not see how the warrant of appointment of Sirkar Vakils is in any way different from the warrant of appointment of District Judges and Munsiffs. In the case of Sirkar Vakils, they can accept private engagements, and I think that they are not overworked since they have time to attend to other private work. Moreover, the Sirkar Vakils are decently paid gentlemen. They are paid during vacation time also, and when they retire they are given pension. So I cannot understand the reasonableness of such a person being given additional payment for his legtimate work.

MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): ഞാൻ വക്കീൽഫീസ് അനുവദിക്കാൻ പാടില്ല എന്ന പ്രമേയത്തെ അനുകൂലിക്കുന്നു. സർക്കാർ വക്കീലന്മാരുടെ ഇടയിൽ ധാരാളം പഴക്കവും തഴക്കവുമുള്ളവരുടെ സംഖ്യ ഒട്ടും കുറവല്ല. നല്ല ഒരു തുക അവർക്കുവേണ്ടി ചിലവിടുന്നുണ്ട്. ഇപ്പോൾതന്നെ അവർക്കു വേണ്ടിടത്തോളം ജോലിയില്ല. ശമ്പളത്തിനോ എണ്ണത്തിനോ അനുരൂപമായ ജോലി അവർക്കില്ല എന്നുള്ളത് നിർവിവാദമായ ഒരു സംഗതിയാണ്. ഓരോ ഡിപ്പാർട്ടുമെൻറിലും അധികച്ചിലവു കുറയ്ക്കണമെന്നു ഞാൻ ബഡ്ജറ്റിനെപ്പറ്റി പൊതുവിൽ വിമർശിച്ച അവസരത്തിൽ പറഞ്ഞിട്ടുണ്ട്. സർക്കാർവക്കീലന്മാരേക്കൊണ്ടുതന്നെ ഈ ആദായനികുതി ഡിപ്പാർട്ടുമെൻറിലേക്കും ആവശ്യമുള്ള സഹായങ്ങൾ ലഭിക്കാൻ സൌകര്യമുണ്ട്. അവർ നേരിട്ടു കേസുനടത്തുകയോ അവരുടെ ഉപദേശത്തെ സ്വീകരിച്ച്

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ആദായനികുതിവകുപ്പിലെ ഉദ്യോഗസ്ഥന്മാർ നടത്തുകയോ ചെയ്താൽ മതി. പ്രത്യേകിച്ച് അതിലേക്ക വക്കീൽഫീസായി യാതൊരു സംഖ്യയും നീക്കിവയ്ക്കേണ്ട ആവശ്യമില്ല.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Sir, this subject was fully threshed out at the last session of the Council and the House accepted the principle and policy of the Sirkar being represented by a vakil by a majority. So I ask the House to adhere to the verdict they have once come to and not go back on what was accepted last time. The House accepted the principle that it was necessary that the Sirkar should be represented in complicated and important cases by vakils.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know from Mr. Robinson the practice obtaining in British India?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): There are many cases in which the Crown is represented both at Home and in India by a lawyer, and I see in Mysore also a provision is made for the Government being represented by vakils.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether in British India a vakil is engaged on behalf of the Crown to appear before the Income Tax Commissioner or the High Court?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I am not prepared to answer him off-hand. I require some time. The principle that the Sirkar should be represented by a vakil has already been accepted. It seems to me that the feeling of the House tends more to the point that our Sirkar Vakils should not receive any separate remuneration for appearing before the Income Tax Commissioner on behalf of the Government.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether it is only Sirkar Vakils that could be engaged to appear on behalf of the Sirkar?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I do not catch him.

PRESIDENT: He wants to know whether your idea is to engage Sirkar Vakils alone to argue these cases.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I have not considered that point.

The House has already accepted that the Sirkar should be represented by a vakil in important and intricate income tax cases. It seems to me that the opposition is only against our present Sirkar Vakils being paid extra fees for the appearances before the Income Tax Commissioner. This question was threshed out—

MR. JOSEPH PANJIKARAN (*Shertallai*): Our case is, without additional payment they should be made to do the work.



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[MR. V. Subba Aiyar.]

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): The opposition is that the Government should be represented by a vakil and that should be done without additional remuneration.

MR. J. JOHN NIDIRY (*Changanacherry cum Minachil*): We have got both the objections.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): In regard to the chief objection against the Sirkar Vakils being employed—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Was not the amount sanctioned for the payment for services already engaged by the Government?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): So the amount should be sanctioned for the payment of Sirkar Vakils who appear before the Income Tax Commissioner.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Was it not a case of payment for services already rendered?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Yes; but the principle that the Sirkar should be represented by a vakil was accepted by the House.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Robinson whether the principle once accepted cannot be rejected or is the House bound by that?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): They can certainly change their verdict. I may only say that it is not desirable that we should come to a decision which will retract us from the previous one. Probably Mr. Subba Aiyar will deal with the legal points that have been raised by Messrs. P. K. Narayana Pillai, Joseph Panjikaran and other gentlemen. I have authority for my saying that the proceedings under the Regulation are judicial proceedings. The matter was so fully discussed at the last session and I do not think it necessary for me to raise all these points again. Many gentlemen on the other side of the House, including Mr. Krishna Aiyar, strongly advocated—unfortunately he is not here to-day—that vakils should appear for the Sirkar. I do not think that anything further was said on the motion.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I do not personally want to speak on this occasion. But somehow or other, I have been dragged into it by some observations by the non-official members and also by the fact that Mr. Robinson introduced my name in the debate. (*Laughter.*)

Now, the first point that has to be considered in this connection is whether there is any necessity for a vakil to appear before the Income Tax Commissioner. With respect to that point, my friend Mr. P. K. Narayana Pillai has raised some technical objection that the proceeding

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before the Commissioner is not a judicial proceeding and therefore he is not competent to hear both sides, although he would concede that even on matters which are not judicial proceedings both sides should be heard to arrive at a proper conclusion. When he put it like that, I do not think it is necessary for us to consider whether the matter in question is a judicial proceeding or not, because, independent of the fact that it is a judicial proceeding, both sides will have to be heard to settle any dispute between any two parties.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know Mr. Subba Aiyar's opinion whether it is a judicial proceeding?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that.

I am prepared to say that it is a judicial proceeding. In the first place, Mr. P. K. Narayana Pillai said that a judicial proceeding is one in which oath should be administered. I fear that he does not remember the definition of "judicial proceeding" in the statutory law. It only says that a judicial proceeding is one in which evidence may be legally taken. So that it does not necessarily mean that such evidence should be oral evidence taken on oath. It is quite enough if documentary evidence is produced, so that the mere fact that the evidence is not taken on oath need not debar us from presuming that it is not a judicial proceeding. If we go by the definition, I think the proceedings before the Income Tax Commissioner are judicial proceedings, because he is bound to enquire into the case and take additional information or evidence and pass orders as the chief revenue authority under the Regulation. So, strictly speaking, it is a judicial proceeding under the Regulation as it stands. I am supported in this view by authorities on the subject.

"In this connection, it is important that the income tax officer should put to the assessee the specific points which are the subject of difference between the Crown and the tax payer in order that the assessee may know what case he has to meet and adduce evidence accordingly."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it only under the Income Tax Act that he can take evidence?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The question is whether the evidence is or may be legally taken. I am quoting it from the Indian Income Tax Act. It is a commentary on the Act. Therefore, I say, when it is a judicial proceeding, evidence, documentary or oral, is and may be taken legally. That will constitute a judicial proceeding. Further in Section 27 of our Regulation it is distinctly provided:

"The Collector or Commissioner shall, for the purposes of any inquiry under this Chapter, have the same powers as vested in a court under the Code of Civil Procedure, when trying a suit in respect of the following matters—

(*a*) enforcing the attendance of any person and *examining him on oath or affirmation*;

(*b*) compelling the production of documents; and

(*c*) issuing commissions for the examination of witnesses and any proceeding before a Collector or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of Sections 187 and 226 of the Travancore Penal Code".

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[Mr. G. Parameswaran Pillai.]

The Collector or Commissioner can thus call for evidence and take evidence on oath. So, I do not think that there can be any doubt that the matter is a judicial proceeding. Then my friend referred to another argument and said that, if it is a judicial proceeding, the cost should be awardable. I do not know of any law which makes it incumbent upon any court to award costs to the other side to make it a judicial proceeding. Though in particular class of cases the awarding of costs is within the discretion of the court, I say that costs may not be awarded. We have got the criminal cases and cases under the Land Conservancy Regulation and other Regulations which impose penalties upon parties. Every such penalty imposed upon them will be by an authority duly constituted for the purpose. He conducts a judicial proceeding and awards penalty. It is not necessary that it should be allowed by the law that the costs should be awardable by the court. So that, the two fundamental tests—

MR. C. SANKARA MENON (*Quilon*): May I know whether vakils are being heard by the Peishkar to dispose of appeals?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that.

So that the two fundamental tests mentioned by my friend Mr. P. K. Narayana Pillai, I believe, are not quite sound and I therefore say that we may take it that it is a judical proceeding, and as I said, even if it is not so, it is open to him to hear the other side also. If it is open, the question is whether he should hear the other. My friend Mr. Sankara Menon raised the question whether the income tax officer—I mean the collector—hears the other side. I say it is open to him to hear the other side. Perhaps it will be a little bit costly to engage a Sirkar Vakil before the appellate authority. I believe the party or Government do not generally engage a vakil.

MR. C. SANKARA MENON (*Quilon*): My question is not only to the Income Tax Regulation but with reference to the Forest and other Regulations.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The fact that a Sirkar Vakil is not engaged in cases under the Forest or other Regulations does not mean that it should not be done or need not be done.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Even Peishkars hear income tax cases in very many cases.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Oh yes! they do. What I say is that inasmuch as the Commissioner as the chief revenue authority can correct errors, it is unnecessary that the other income tax officers should hear Sirkar Vakils and when so much objection is taken to engage a Vakil before the Commissioner and although it may be desirable that the Sirkar Vakil should appear in all those cases, I do not know whether it will be expedient—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What about the proceedings under the Land Acquisition Regulation?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is quite open to them. In the case of a Land Acquisition enquiry the proceedings is supposed to be not judicial until a reference is made. Till then he is supposed to be an agent of the Government or an executive officer. The moment he begins to record a reference, he is a judicial officer and the reference goes to the District Court where the Sirkar Vakil appears and both parties are heard. I do not think that that analogy will hold good here. I believe, therefore, we may take it that the Income Tax Commissioner or the chief revenue authority is a judicial officer for the purpose of the Regulation.

MR. A. HOOGEWERF (*Nominated*): I beg to know whether when the Dewan decides revenue cases Sirkar Vakils appear.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Vakils do appear. If it is a statutory appeal it is open to him to engage a Sirkar Vakil. If it is not, it may not be done. In some cases it may not be because it is open to the aggrieved party to have it rectified by a regular suit, whether it is under the Land Conservancy Regulation or the Land Assignment Regulation where, I believe, suits are allowed in certain matters.

MR. A. HOOGEWERF (*Nominated*): May I know whether any money is paid to a vakil for appearing before the Dewan?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He does not ordinarily requisition the services of a Sirkar Vakil. If he does we will send in our bill. The only question is whether it is necessary to do so. Mr. Robinson at the last meeting of the Council did pointedly bring to the notice of the House that it was absolutely necessary that we should hear both sides.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know when the necessity for engaging a Sirkar Vakil was felt?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know. I think Mr. Robinson must be asked about it.

It is only when we were asked to appear that we came to know about it. As to what induced him to start the correspondence I do not know.

The point is whether, with reference to this particular matter, it is desirable that Sirkar Vakils should appear and my friend Mr. Paramesvaran Pillai pointed out that it was open to Mr. Robinson to make a reference. In the first place, there is a difference between the British Indian Act and our present Regulation, because this follows the old British Indian Act where no reference to the High Court is made obligatory.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know from Mr. Subba Aiyar whether there is any provision in the Draft Income Tax Bill, making the reference to the High Court obligatory?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. The Bill is ready and it has been sent to Mr. Robinson for his views and in that amended Bill I have made the alteration and introduced the provision making it obligatory. There is the further safeguard also against setting up frivolous applications for references being made to the High Court. I believe it is obligatory upon the party seeking reference to deposit a certain sum, the amount which will have to be paid as cost to Government.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkra*): May I know whether he has also provided for costs being awarded to parties by the Government if the latter fails?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly the High Court has the power. To realise it from the Government is very easy in case the High Court sees that cost should be awarded. In the case of the assessees it may be difficult to realise the cost in many instances. But in the case of the Government it is very easy to realise and so the Government have not to deposit the cost. So, till then, a frivolous application for reference cannot be avoided and, if the Sirkar wins, there can be no means of realising the cost from the parties. So that, till the Regulation is amended there is real necessity for hearing Sirkar Vakils. Reference in important cases may be due to the fact that the vakil on the other side may quote some authority while the Revenue Commissioner may not be able to know whether they are overruled or not. I know, as a matter of fact, many instances in which the rulings of one High Court are relied upon. The High Courts hold different views and the Privy Council rulings—for that matter the House of Lords—are to the contrary, so that it may be rather misleading so far as Mr. Robinson is concerned. He is not expected to read all the decisions of the High Courts in India and the courts in England in order to know whether a particular ruling relied upon is correct or to be followed. It may be that in many cases the vakil appearing before him may quote a decision which has been overruled.

MR. JOSEPH PANJIKARAN (*Shertallai*): Is it not for such cases that the power to refer is vested in him?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that.

It was suggested by my friends on the other side that Sirkar Vakils may be asked to record their opinions. I do not know whether they would press that point, because I believe nothing can be more disastrous to a party if that course is adopted. In that case, the Sirkar Vakils' opinion will be a confidential document and the Land Revenue Commissioner will have to hear the party and then go to his room and simply write out a judgment in accordance with the views of the Sirkar Vakil. I do not know whether this will be satisfactory to the party concerned.

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MR. A. HOOGEWERF (*Nominated*) : I want to know whether we are to presume that the Sirkar Vakil is a superior legal officer even to the Land Revenue Commissioner.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*: Certainly.

MR. A. HOOGEWERF (*Nominated*) : Is he a compendium of all legal knowledge ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Whether he is or is not, is a different question. He is supposed to be—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : May I ask whether when the Sirkar Vakil answers a reference he should not point out both sides of the case.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : As an illustration, say Mr. G. Paramesvaran Pillai appears for the other side. The Sirkar Vakil simply records his opinion. In that case there is every probability of the Income Tax Commissioner following the opinion recorded by the Sirkar Vakil. But if he appears in person and argues, it is open to Mr. G. Paramesvaran Pillai to say that the Sirkar Vakil is wrong and that his argument cannot hold water. That would certainly have much effect on Mr. Robinson.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : It will be open to him to take the case to the High Court.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : What I ask is, instead of asking the Sirkar Vakil to openly meet the arguments of the other side, and hearing the arguments on both sides and come to a conclusion, will any member of the bar seriously advise that Mr. Robinson should get a private record by sending a reference to the Sirkar Vakil and be willing to be guided by that opinion? I think that would rather be a dangerous procedure.

PRESIDENT: I must draw your attention to the time.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I will take only a minute more.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Will this apply to other references?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : No.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Why?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : In the case of judicial matters no reference is made to us. In the case of notifications or rules reference is made to us and in all matters which are generally excluded from the province of the civil court, references are made to us. In matters judicial we are not recording legal opinions.

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[Mr. Joseph Panjikaran.]

There is only one other matter which was said about the Sirkar Vakils by Mr. Panjikaran and, I believe, by Mr. Kunjitomman. Mr. Panjikaran pointedly said that there were very many Sirkar Vakils and that they had not got much work. Of course, I believe, we will have the matter coming up when the judicial budget is taken up, and there may be a good deal of criticism about the Sirkar Vakils then. As for the statement that we are overpaid it depends upon the stand-point from which we view the matter. I can only challenge my friend Mr. Joseph Panjikaran that he need not be under the impression that the Sirkar Vakils are overpaid and that they receive fat pay. I, for one, demur to that statement, because I, at any rate, consider that my services are worth much more than I am paid for and I hope I may be able to prove it to him soon. I therefore say that it is absolutely irrelevant to the point to say that there are many Sirkar Vakils and that they are overpaid.

Then, referring to the question whether they should not appear and do the additional work just as the Munsiff who has to decide cases under the new Regulations, I may say that the fundamental distinction between the Sirkar Vakil and the Munsiff is forgotten. We are not full-time officers. We are not supposed to work all the time for the Government. We are only attached to a particular office. Just as the Munsiff attached to the Trivandrum court need not decide the cases filed in the Neyyattinkara Munsiff's Court, the Head Sirkar Vakil and his Assistants need appear only in the High Court.

MR. JOSEPH PANJIKARAN (*Shertallai*) : If the case is transfered ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Certainly; so also in matters before the High Court we are bound to appear, and the Sirkar Vakils attached to the District Court should appear before the District Court.

MR. JOSEPH PANJIKARAN (*Shertallai*) : Is there any written agreement to the effect that the Sirkar Vakil should only appear before the High Court and the District Court ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I say the past usage is to that effect. I may also say that our Civil Procedure Code makes it obligatory that the suits by or against the Sirkar should be filed in the District Court for the only and simple reason, unlike in British India, that there are Sirkar Vakils attached only to the District Courts here. Otherwise Sirkar suits may be filed in the Munsiff's Court as well; so that it is evident that the Sirkar Vakils are supposed to appear only in the District Court.

MR. JOSEPH PANJIKARAN (*Shertallai*) : Is it for the convenience of the Sirkar Vakil that the law is made that Sirkar case should be filed only in the District Court ?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): When it is understood that they are not full-time officers, I say, their convenience also must be looked to, because it is one of the implied conditions of the service.

MR. JOSEPH PANJIKARAN (*Shertallai*): Are they not taking up private engagement? Is it not the reason that they should take up additional work?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Not necessarily. The Sirkar Vakils cannot be asked to go and appear before any other officer simply because they have time. In that case, why not ask us to go and appear before Division Peishkars or the Conservator of Forests or any other officer?

MR. JOSEPH PANJIKARAN (*Shertallai*): That is exactly our difficulty. Is there any difference in the pension or the rate of pay in regard to Sirkar Vakils?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have explained it on more than one occasion. It is by taking into consideration the low rate of pay fixed for the Sirkar Vakils that they are allowed to have private practice.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Is there any officer in the State who is satisfied with his pay? (*Laughter.*)

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There may not be; just as Mr. Nidiry is not satisfied with what he earns. (*Laughter.*)

MR. C. SANKARA MENON (*Quilon*): In spite of all that has been said on behalf of the Government I still remain unconvinced. I therefore object to the demand, not so much to the amount of Rs. 1,000 now demanded, but I object to it on principle. I find similar provisions in other demands, for instance, the Excise and the Forest Departments. Special law charges for the administration of these fiscal regulations cannot be justified on any reasonable principle. We have got Sirkar Vakils maintained for advising the Government and advocating their cause. It appears to me that it is unjust that law charges should be demanded for the working of these Regulations. On these grounds and on principle I object to the demand and support the motion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I have nothing more to add than what has already been said in the course of the debate. I myself pointed out however that the only service that would be rendered by these vakils is said to be to ascertain whether there is any doubt which may influence the Income Tax Commissioner to make a reference to the High Court. In regard to that reference, the Sirkar Vakils' Department will be amply sufficient and even otherwise I do not see any particular reason why any vakil should be entertained and fees paid for that purpose. I should certainly consider this to be a demand which does not deserve a grant.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): With reference to Mr. G. Paramesvaran Pillai's arguments



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[Mr. S. C. H. Robinson.]

I may at the very outset say that it is very difficult to express legal opinion. It is a difficult affair to study the case and look into several High Court rulings before appearing before the Income Tax Commissioner, hearing the arguments of the other side and meeting all the points raised. When the Sirkar Vakil is asked to give an opinion he simply gives it as the case stands before him. But in the course of the arguments fresh points continually arise. As regards the cases that come before me under the Income Tax Regulation, most of them are very simple cases in which the appeals relate to the non-observance by the Collector of certain provisions of the Regulation or his failure to allow certain deductions allowed by the law. These are simple cases and I do not want to know the opinion of the Sirkar Vakil with reference to them. We go into the rules and allow such deductions as are allowed by law. But cases may come up in which complicated points may arise, such, for instance, as a case in which the question as to whether any income accrues and is taxable. That is an instance of a case in which the Sirkar Vakil comes in. In complicated cases the Sirkar Vakil is engaged and he goes to the law library and finds out the ruling from the decisions of the Privy Council in England and sometimes puts the case with an entirely different view on the subject, so much so that even the vakil appearing for the other side goes contented with the verdict in the case. There have been very few cases where the Sirkar Vakil has appeared before me in which there was any application from the parties for reference to the High Court.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether under the Draft Amendment Bill referred to by Mr. Subba Aiyar, when reference becomes obligatory, the need for any Sirkar Vakil will be required?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I cannot pass an opinion beforehand. It is not fair to ask me to answer the question now. We must consider the matter when it arises.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know as to when the necessity was felt by the Income Tax Commissioner himself?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I know the question was coming. I do not remember what exactly the time was when I was inclined to go to the Sirkar Vakil.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know the number of references made by the Land Revenue Commissioner to the High Court?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I think it will be three or four.

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Sirkar Vakils appeared in sixteen cases up to now, and out of these sixteen cases, the decisions in six cases have been favourable to the parties. Appeals have been dismissed or references made in five cases and two cases are pending decision. That will show that, in appeals where Sirkar Vakils appear, the decisions have not, in the majority of the cases ended favourably to the Sirkar. I do not think that the objections are so much against the Crown being represented, as against Sirkar Vakils having to be paid extra for appearing in these cases. That is the point and I think Mr. Subba Aiyar has met the arguments very easily and fairly.

MR. C. SANKARA MENON (*Quilon*): Have the Division Peishkars had to hear Sirkar Vakils before sending a reference in respect of the Stamp Regulation?

MR. S. C. H. ROBINSON (*Land Revenue and Income-Tax Commissioner*): They have not done it so far, and I do not think it necessary, because the parties have a final appeal before me.

PRESIDENT: He refers to the Stamp Regulation and not to the Income Tax Regulation.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissoner*): I do not know. I have got nothing to do with it.

PRESIDENT: Have you finished?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissoner*): I think that is all that I have to say. I will only ask the House not to go back upon the verdict which was once given by it in the matter.

PRESIDENT: I shall now put the motion to the vote of the House.

The motion was put to the vote and carried, 22 members voting *for* and 17 *against*.

***Motions 53 and 54.***

The following motions were not moved:—

MR. G. PARAMESVARAN PILLAI:

53. To reduce the total allotment of Rs. ·15 lakh under Demand II by Rs. 100.

MR. M. R. MADHAVA VARIAR:

54. To reduce the total allotment of Rs. ·15 lakh under Demand II by Rs. 100.

PRESIDENT: I now put Demand II—Taxes on Income, for Rs. ·15 lakh *minus* Rs. 1,000 disallowed by the House, to the vote of the House, and I take it that the House accepts it.

The grant was made.

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DEMAND III—EXCISE DEPARTMENT.

MR. K. GOVINDA PILLAI (*Acting Excise Commissioner*): I beg to move for a grant not exceeding Rs. 5·05 lakhs under Demand III—Excise Department.

***Motion 55.***

The following motion was not moved :—

MR. T. KUMARA PILLAI :

55. To reduce the allotment of Rs. 43,569 under Salaries and Establishment by Rs. 1,440.

***Motion 56.***

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram cum Shencottah*) : Sir, I beg to make the following motion :—

*56. To reduce the allotment of Rs. 43,569 under Salaries and Establishment in Salt Factories by Rs. 9,372.*

Provision is made for 7 Inspectors, 1 Sub-Inspector, 42 Petty Officers and 136 peons. I submit that the allotment may be reduced by Rs. 9,372 which represent the salary of 1 Inspector and the establishment of 10 Petty Officers and 36 peons. Because of my thorough experience of the working of the Salt Factories for the last ten years I may be trusted when I say that the supervision of the factories may be effected efficiently under the reduced establishment proposed.

I would distribute the Inspectors, Petty Officers and peons in the following manner. Under the present arrangement, we have 7 Inspectors, 1 Sub-Inspector, 42 Petty Officers and 136 peons. After removing 1 Inspector, 10 Petty Officers and 36 peons, I propose to distribute the remaining 6 Inspectors, 1 Sub-Inspector, 32 Petty Officers and 100 peons in the following manner :—

| | *Inspector.* | *Petty Officer.* | *Peons.* |
|---|---|---|---|
| Colachel ... | 1 | 2 | 4 |
| Rajakamangalam ... | 1 | 3 | 6 |
| Puttallom and Sri Sankara *allom* ... | 1 | 6 | 18 |
| Gopalanathan and Krishnamani *allom* ... | 1 | 6 | 20 |
| Cape Comorin Company and Messrs. Avathanigal's ... | 1 | 6 | 20 |
| Old *allom* ... | 1 | 4 | 18 |
| Kumari *allom* ... | ... | 2 | 4 |
| Swaminatha Pillai's factory ... | ... | ... | 2 |
| Variyur Sub-Inspector ... | 1 | 1 | 4 |
| Assistant Commissioner's office ... | ... | ... | 4 |
| 6 Inspectors<br>1 Sub-Inspector ... | | 30 | 100 |

Thus one Inspector, 12 Petty Officers and 36 peons can be made available for work in the northern taluks where the independent shop system is coming into force from Chingam, 1100, onwards.

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